



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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By ECF

The Honorable Paul A. Crotty
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

SO ORDERED: 4-7-15
Paul A. Crotty
HON. PAUL A. CROTTY
UNITED STATES DISTRICT JUDGE

Re: SEC v. Sky Capital LLC et al., 09 Civ. 6129 (SDNY)(PAC)

Dear Judge Crotty:

I am counsel for the Plaintiff Securities and Exchange Commission ("Commission") in the above-captioned action. This letter briefly describes: (a) the procedural history of this matter; (b) the current status of the related criminal case; and (c) the progress of our settlement discussions. As detailed below, Commission counsel has reached settlements in principle with two of the defendants, which are subject to approval by the Commission; and is still attempting to reach an amicable resolution with the remaining defendants. Accordingly, Commission counsel respectfully requests that the parties provide an additional status report in sixty days.

A. Procedural History

The Commission filed its complaint on July 8, 2009 ("Complaint"), alleging that Sky Capital used fraudulent tactics from September 2002 through November 2006 to raise over \$61 million from investors in two related companies ("Sky Entities"). The Complaint alleged that the defendants — Sky Capital founder and CEO Ross Mandell, former COO Stephen Shea, and brokers Adam Harrington, Arn Wilson, Michael Passaro, and Robert Grabowski— orchestrated and participated in the fraudulent scheme. According to the Complaint, Mandell directed Sky Capital brokers to make material misrepresentations, and withhold material information, to

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induce their customers to purchase Sky Entities' stocks. The Complaint alleged that defendants prevented investors from selling their Sky Entities' stocks, thus artificially inflating the stock price. Consequently, numerous investors were unable to sell their Sky Entities' shares before trading was suspended, rendering their investments worthless. Defendants thus violated Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The Complaint seeks a judgment enjoining defendants from future violations of the those provisions; ordering them to pay disgorgement and civil money penalties; and permanently prohibiting Mandell from acting as an officer or director of any registered public company. By Order dated September 16, 2009, the Court stayed this case pending completion of the simultaneously-filed related criminal proceeding, *United States v. Mandell, et al.*, 09-CR-662 (SDNY)(PAC).

B. Related Criminal Case

In the related criminal case, defendants Mandell, Harrington, Shea, Wilson, Grabowski, and Passaro were charged with securities fraud, wire fraud, mail fraud, and conspiracy to commit securities fraud, wire fraud and mail fraud. Defendants Shea, Wilson, Grabowski and Passaro entered guilty pleas. *Id.* On July 26, 2011, after a jury trial, Mandell and Harrington were found guilty on all charged counts. The Court ultimately sentenced defendants as follows:

- On August 27, 2014, Mandell was sentenced to 144 months of imprisonment, three years of supervised release, \$50,000,000 in forfeiture, \$24,880,460 in restitution, a 10,000 fine and a \$400 special assessment. *Id.*¹
- On August 27, 2014, Harrington was sentenced to 60 months of imprisonment, three years of supervised release, \$20,000,000 in forfeiture, \$24,880,460 in restitution, and a \$400 special assessment. *Id.*

¹ Each defendant was ordered to pay forfeiture and restitution on a joint and several basis with his co-defendants and co-conspirators, Philip Akel and McKyle Clyburn, who were charged separately. *Id.*, *United States v. Akel*, 09-CR-659 (SDNY)(PAC), *United States v. Clyburn*, 09-CR-598 (SDNY)(PAC).

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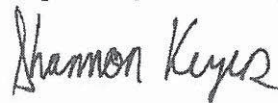
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- On September 24, 2014, Wilson was sentenced to time served, three years of supervised release, \$50,000,000 in forfeiture, \$24,880,460 and a \$400 special assessment. *Id.*
- On October 28, 2014, Grabowski was sentenced to time served, three years of supervised release, \$50,000,000 in forfeiture, \$24,880,460 in restitution, and a \$400 special assessment. *Id.*
- On November 12, 2014, Passaro was sentenced to time served, three years of supervised release, \$50,000,000 in forfeiture, \$24,880,460 in restitution, and a \$400 special assessment. *Id.*
- On November 14, 2014, Shea was sentenced to 30 months of imprisonment, three years of supervised release, \$50,000,000 in forfeiture, \$24,880,460 in restitution, and a \$400 special assessment. *Id.*

C. Status of Settlement Discussions

Commission counsel has reached settlement agreements-in-principle with Shea and Passaro, subject to review and approval by the Commission, which usually takes approximately six to eight weeks. We are attempting to reach an amicable resolution with the remaining defendants: Sky Capital, Mandell, Harrington, Wilson, and Grabowski. In March, Commission counsel sent proposed settlement offers to the five remaining defendants, all of whom are *pro se*. Discussions have been delayed in part because Mandell and Harrington are incarcerated. Commission counsel plans to continue its efforts to resolve this case. Accordingly, the Commission needs additional time to seek Commission authorization for its settlement agreements-in-principle and to attempt to resolve its remaining claims, and we respectfully request the opportunity to provide an additional status report within sixty days.

Respectfully submitted,



Shannon Keyes
Senior Counsel

cc: Sky Capital, Ross Mandell (*pro se*), Adam Harrington (*pro se*), Stephen Shea (*pro se*), Arn Wilson (*pro se*), Robert Grabowski (*pro se*) and Michael Passaro (*pro se*)